

*Jonathan Vaughan and Katherin his
Wife the Widow and Relict of } Appellants. } Robert Thurston Senior,
John Thurston deceased. } Respondent.*

The Appellants C A S E.

THAT in Novemb. 1691. The Respondent *Robert Thurston* Father of *John* the Appellants former Husband for his Sons preferment in the World, supply'd him with 100*l.* to purchase an Annuity of 20*l. per Annum* from one *Safford* for his Life only, without any provision or advantage to the Appellant *Katherin* his then Wife.

That *John* died within 3 Months, without receiving any benefit from the said Annuity and much in Debt.

That the Appellant *Katherin* resolving not to intermeddle with the effects of her said Husband, was decoy'd and overperswaded by the insinuations of the Respondent, to take Administration to her said Husband.

That the Respondent and his son *Robert* the Younger, were present at the Appellants payment of her said Husbands Debts, and advised and approv'd thereof.

That during the Appellant *Katherines* Widowhood, the Respondent never demanded the said 100*l.* which was Six years.

That as soon as the Appellant *Jonatban* intermarried her, the Respondent, commenced his Action at Law for the said 100*l.* pretending it was lent only.

The Appellant *Jonatban* being a stranger to the intrigues of the Family, being inform'd It was given to the said *John*, as a Portion, and finding it no way secured, by Bond, Bill or Note, or any ways owned by the said *John Thurston* to be a Debt, and being inform'd the Respondent had possesst himself of good part of the Personal Estate of his said son *John*, was advised to prefer his Bill in Chancery to be relieved against the said Action, and to discover the pretences of the Respondent to the 100*l.* and how much of the said *John Thurston's* Assets were come to his hands.

Whereupon the Respondent by Answer, insisting it was a Debt, and no part of it satisfied or paid him, preferr'd his Cross Bill against the Appellants for discovery of Assets.

Both Causes coming on to be heard before the late Lord Chancellor *Somers* Novemb. 7th 1699. he Decreed all parties to go to an Account before *Sir Robert Legard*, one of the Masters of that Court, as to what Assets came to the Appellants hands.

That they proceeded on the Account accordingly before the said Master, who on the 8th of Feb. following, Reported 132*l. 2 s. 4 d.* as Assets of the said Testator in the Appellants hands.

That it appearing on hearing of the said Causes, that the Respondent had possesst himself of 15*l.* of the Testators effects, tho by answer he utterly deny'd it; An issue at Law was directed to Try, whether he had such effects in his hands or not, but the Respondent not thinking fit to try that issue; owned that he had possessted himself of the 15*l.* and would accept of it as part of the said 100*l.* and was order'd to discount the same, and his Debt thereby became reduc'd to 85*l.* which the Master allow'd him out of the 132*l. 2 s. 4 d.* so that there remain'd under that Report in the Appellants hands 47*l. 2 s. 4 d.* on and above the said 85*l.*

To which Report the Appellants took Ten exceptions, and on arguing those Exceptions before *Sir Nathan Wright* Lord Keeper of the great Seal of England on the 5th of July 1700 his Lordship was pleased to over rule some of those Exceptions, and order'd a Commission to Examin Witnesses two the other 8 Exceptions, whereby the Appellants discharg'd themselves of the said 47*l.* remaining in their hands as aforesaid, and at the same Commission (tho the examination was directed to be made only to the Matter of those two Exceptions, yet the Appellants having no power sooner or otherwise to clear themselves in that Case, being a matter of account, exceeded the bounds of the Order, and by positive proof purg'd themselves of 35*l.* more, and were, and are able to give particular proof to as much more) as would have brought the Account to a Balance, but the Depositions to that point were over ruled by the Court of Chancery, as exceeding the limits of the Order, and the Appellant paid above 7*l.* Costs in respect thereof.

That on the 26 of July 1701. The Cause was finally heard before the Lord Keeper of the great Seal of England; who Decreed the Appellants to pay to the Respondent 85*l.* out of 85*l. 2 s. 4 d.* Assets Reported to remain in the Appellants hands.

WHICH DECREE was erroneous and very severe on the Appellants, in regard the Appellants were denied a Tryal at Law, or a further Commission to make proof of the other 8 Exceptions of which the Respondent made only presumptive proofs, which had the Appellant been admited to a Tryal, or further Commission, they had made positive proofs to the contrary. The Depositions of the Appellant which were suffit clearing some parts thereof, and that the Appellants had in truth paid more Debts then the Testators Assets amounted unto.

That notwithstanding the severity of the said Report, there remain'd but 2*s. 4 d.* Assets in the Appellants hands; The Lord Keeper by a subsequent Order of the 13 of Nov. last past, Oorder'd the Appellants to pay the Respondent his Costs which are taxed at 224*l. 17 s. 4 d.* to the utter ruin of the Appellants,

That the Appellants are advised, and humbly Conceive that so excessive Costs against an Executrix is unprecedented, and that the Appellants ought rather to have their Costs in their own Cause, being reliev'd in part, and having falsifi'd the Respondents Answer, and the Appellants had undoubtedly discharg'd themselves of all Assets had the Appellants been allow'd the Liberty of examining to those particulat Items of the Report they excepted against.

And so humbly Hope this Honourable House will be pleased to Reverse the said Decree, and Subsequent Order, and otherwise relieve the Appellants as to Your Lordships, in Justice, and Equity, shall seem meet.

Ro. Price: